

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Steven D. Kierstead)	Docket No. 12-0160
)	
Petitioner)	Decision and Order

Appearances:

Steven D. Kierstead, the Petitioner, representing himself (appearing *pro se*); and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The Hearing (by telephone) was held on February 15, 2012. Petitioner Steven D. Kierstead ("Petitioner Kierstead"), participated, representing himself (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent ("USDA Rural Development") and is represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Kierstead's "Consumer Debtor Financial Statement" filed on February 6, 2012 is admitted into evidence, together with the testimony of Petitioner Kierstead. Also admitted into evidence is Petitioner Kierstead's Hearing Request filed on January 5, 2012.
4. USDA Rural Development's Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, were filed on January 30, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.
5. Petitioner Kierstead owes to USDA Rural Development a balance of **\$48,215.36** (as of January 25, 2012) in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1987, for a home in Maine. The balance is now

unsecured (“the debt”). *See* USDA Rural Development Exhibits RX 1 through RX 6, esp. RX 5, plus Narrative, Witness & Exhibit List.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$48,215.36** would increase the current balance by \$13,500.30, to \$61,715.66. *See* USDA Rural Development Exhibits, esp. RX 5, p. 3, plus the testimony of Michelle Tanner.

7. The amount Petitioner Kierstead borrowed in 1987 was \$49,500.00. RX 1. The loan was reamortized 3 times, in 1990, in 1996, and in 1998. RX 1, p. 3. Each time, the loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The reamortization did not change the total amount owed, which all became principal. In 1990, the principal amount due on the account became \$49,519.87. RX 1, p. 3. In 1996, the principal amount due on the account became \$54,411.25. RX 1, p. 3. In 1998, the principal amount due on the account became \$62,333.75. RX 1, p. 3. Petitioner Kierstead made no payments after April 2, 1998. The loan was accelerated for foreclosure on March 4, 1999. RX 2, pp. 1-3. Interest accrued after April 2, 1998 was added to the principal, making the principal balance \$76,647.80 as of August 28, 2000 (more than 2 years of interest). By the time the home was sold for \$33,000.00 in a foreclosure sale on December 13, 2000 (the Appraised Value was \$36,000.00; *see* RX 3, p. 1), the debt had grown to \$79,142.52.

\$ 76,647.80	Unpaid Principal Balance prior to sale
<u>\$ 2,494.72</u>	Unpaid Interest Balance
\$ 79,142.52	
- <u>33,000.00</u>	Proceeds from the sale
<u>\$ 46,142.52</u>	Amount Due

RX 6, p. 1, and USDA Rural Development Narrative.

Foreclosure fees billed by the Department of Justice in the amount of \$2,072.84 (\$1,400.00 plus \$672.84; *see* RX 3, p. 10) were thereafter added, making the balance owed \$48,215.36. The proceeds of sale were received on January 26, 2001. Interest stopped accruing. The debt was referred to Treasury for collection on December 8, 2003. During the following 8 years plus, there were no collections by Treasury; as of January 25, 2012, **\$48,215.36** remained unpaid (excluding the potential remaining collection fees). *See* RX 6, plus Michelle Tanner’s testimony. Petitioner Kierstead reported during the Hearing that garnishment did begin but appeared to have stopped.

8. Petitioner Kierstead works full-time as a dispatcher, making \$14.10 per hour. His disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly \$1,800.00 to \$1,900.00 per month. [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] 31 C.F.R. § 285.11. Petitioner Kierstead's Consumer Debtor Financial Statement shows reasonable and necessary monthly living expenses for himself and his wife of nearly 32 years (his co-borrower) of \$2,686.00. At the time of the hearing Petitioner Kierstead's wife was unemployed and receiving unemployment compensation. Petitioner Kierstead and his wife have two grown sons and two grandchildren. Petitioner Kierstead is paying several years' back taxes, both state and federal. Petitioner Kierstead owes considerable credit card debt and a significant balance on a motor vehicle that was repossessed.

9. Garnishment at 15% of Petitioner Kierstead's disposable pay could yield \$270.00 to \$285.00 per month (more when there is overtime) in repayment of the debt, but that would cause Petitioner Kierstead and his wife financial hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Kierstead's disposable pay through May 2014; then **up to 10%** of Petitioner Kierstead's disposable pay thereafter. 31 C.F.R. § 285.11.

10. Petitioner Kierstead is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

11. Garnishment of Petitioner Kierstead's disposable pay is authorized, in limited amount. *See* paragraph 9. Petitioner Kierstead, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Kierstead, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Kierstead, you may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less. Petitioner Kierstead, you may want to request apportionment of debt between you and the co-borrower. Petitioner Kierstead, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Kierstead and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

13. Petitioner Kierstead owes the debt described in paragraphs 5, 6 and 7.

14. To prevent financial hardship, garnishment **up to 5%** of Petitioner Kierstead's disposable pay is authorized, through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

15. **No refund** to Petitioner Kierstead of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

16. Repayment of the debt may also occur through *offset* of Petitioner Kierstead's **income tax refunds** or other **Federal monies** payable to the order of Mr. Kierstead.

Order

17. Until the debt is repaid, Petitioner Kierstead shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

18. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Kierstead's disposable pay through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

19. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Kierstead's pay, to be returned to Petitioner Kierstead.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 18th day of April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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